



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

[REDACTED]
Luis H.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Eastern Area),
Agency.

Appeal No. 2019002564

Agency No. 4C-190-0006-19

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final decision dated February 28, 2019, dismissing a formal complaint of unlawful employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Carrier at the Agency's Frankfort Post Office in Philadelphia, Pennsylvania.

On February 9, 2019, Complainant filed the instant formal complaint. Complainant claimed that the Agency subjected him to discrimination based on disability when:

1. on an unspecified date, management shared his medical information as part of a co-worker's controversion case; and
2. on November 1, 2018, management disclosed his medical information at a District Reasonable Accommodation Committee (DRAC) meeting.

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

On February 28, 2019, the Agency issued the instant final decision. The Agency dismissed claim 1 for stating the same claim which was raised in his informal EEO complaint, pursuant to 29 C.F.R. § 1614.107(a)(1). Specifically, the Agency found that Complainant raised the same issue previously in an informal complaint identified as Agency Case No. 4C-190-0037-18, which was closed after Complainant withdrew his informal complaint.

The Agency dismissed claim 2 for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), finding that Complainant was not aggrieved.

The instant appeal followed.

ANALYSIS AND FINDINGS

Claim 1 – Same claim

The Commission has found that where a complainant “knowingly and voluntarily withdrew his complaint ... the Commission considers the matter to have been finally abandoned.” See Tellez v. Dep’t of Transp. EEOC Request No. 05930805 (Feb. 25, 1994). The Commission has held that a complainant may not request reinstatement of an informal complaint, with the exception of a complaint withdrawn pursuant to a settlement agreement, unless there is a showing of coercion. Allen v. Dep’t of Defense, EEOC Request No. 05940168 (May 25, 1995). In addition, the dismissal of a complaint is improper if the Agency’s action is misleading or misinforming the complainant resulted in the dismissal. Perry v. U.S. Postal Serv., EEOC Appeal No. 01A45685 (Oct. 17, 2005).

Here, Complainant had previously raised the issue of management sharing his medical information as part of a co-worker’s controversy case in an informal complaint (Agency Case No. 4C-190-0037-18), which he voluntarily withdrew on May 7, 2018. Specifically, we note that in the subject informal complaint, Complainant claimed that he was discriminated against on the basis of disability when on February 21, 2018, management placed his medical information in with a co-worker’s paperwork to controvert co-worker’s case, and that his information was shared with multiple parties. There is nothing in the record reflecting that the Agency misled or misinformed Complainant on this issue. Therefore, the Agency properly dismissed claim 1.

Claim 2 – Failure to state a claim

The regulation set forth at 29 C.F.R. § 1614.107(a)(1) provides, in relevant part, that an Agency shall dismiss a complaint that fails to state a claim. An Agency shall accept a complaint from any aggrieved employee or applicant for employment who believes that he or she has been discriminated against by that agency because of race, color, religion, sex, national origin, age or disabling condition. 29 C.F.R. §§ 1614.103, .106(a). The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm or loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994).

Here, the Agency correctly determined that Complainant has not alleged a personal loss or harm regarding a term, condition or privilege of his employment. A fair reading of claim 2 is that it relates to purported actions by management disclosing Complainant's medical information during a Disability Reasonable Accommodation Committee (DRAC) on November 1, 2018. Complainant claimed that management violated Health Insurance Portability and Accountability Act (HIPAA) concerning his case. The Agency argued that the reason for a DRAC meeting was to ascertain if Complainant can be accommodated per his medical restrictions.

Finally, to the extent that Complainant is claiming a violation of the HIPAA law, the Commission has previously determined that matters concerning the HIPAA, and the Privacy Act, are not within the regulations enforced by the Commission. See Grove v. U.S. Postal Service, EEOC Appeal No. 0120110456 (January 5, 2012); Price v. U.S. Postal Service, EEOC Appeal No. 0120111033 (December 8, 2011); Scott v. U.S. Postal Service, EEOC Appeal No. 0120101539 (August 13, 2010); Cromer v. U.S. Postal Service, EEOC Appeal No. 0120083518 (April 22, 2010). The Department of Health and Human Services' Office of Civil Rights enforces HIPAA, making the EEO complaint process the improper forum to raise a HIPAA violation. Lee v. U.S. Postal Service, EEOC Request No. 0520110481 (November 4, 2011).

CONCLUSION

The Agency's final decision to dismiss the complaint is AFFIRMED.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The

court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

May 31, 2019

Date